

Legal and Title Controversy Committee

ON MOTION OF Mr. Noel, duly seconded by Mr. Arnold, the following Resolution was offered and unanimously adopted:

WHEREAS, some, but not all, State mineral leases (and Operating Agreements) include a clause generally known as a “Force Majeure” clause which speaks to lease maintenance in the face of natural disasters (such as major storms or major floods) or major accidents beyond lessee’s control (such as blowout, fire or explosion) which shut down lease downhole drilling or downhole reworking operations (hereafter “lease operations”) or production which has already commenced; which clauses do not address fortuitous events not within the limited categories named, but which nevertheless may shut down lease operations (or operations) or production and thus endanger lease maintenance, nor do the clauses address fortuitous events which prevent commencement of lease operations or production; and

WHEREAS, fortuitous events not within the limited categories of natural disasters or major accidents occasionally occur due to various causes beyond lessee’s or operator’s control which prevent commencement or continuation of lease operations (or operations) on or production from or attributable to the respective State mineral leases by which lease maintenance is endangered; and

WHEREAS, inconsistencies have occurred in the past in addressing the use of force majeure lease maintenance — both with regards to those leases containing a force majeure clause and those leases which have no such clause — to maintain in full force and effect those State mineral leases affected by fortuitous events which prevent commencement or continuation of lease operations (or operations) or production as the primary means of lease maintenance; and

WHEREAS, to clarify and facilitate the operation of force majeure in maintaining State mineral leases subjected to a fortuitous event which prevents commencement or continuation of lease operations (or operations) or production as the primary means of lease maintenance, the State Mineral Board desires to declare, as a matter of policy, how it and its staff will view the operation of force majeure in connection with maintenance of all State mineral leases and operating agreements, both those which include a force majeure clause (to the extent the lease language does not conflict with such policy, and absent a written agreement between the Lessor and Lessee amending the lease as regards force majeure) and those which do not, and the obligations, duties and rights of the respective parties concerned.

THEREFORE, BE IT RESOLVED that the State Mineral Board does herein declare as a matter of policy with respect to the occurrence of fortuitous events which may affect the maintenance of State mineral leases and Operating Agreements the following, to-wit:

- 1) Whenever a fortuitous event beyond the control of the lessee or operator occurs which may adversely affect lease maintenance of a State mineral lease or operating agreement which is otherwise being properly maintained in full force and effect at the time, it shall be incumbent on the lessee or operator to notify the State Mineral Board through the Office of Mineral Resources staff by telephone at (225) 342-9199, followed timely by written notice deposited in the U.S. mail or other recognized mail carrier for delivery to the Office of Mineral Resources, LaSalle Building, 617 North Third Street, Eighth Floor 70802 or P.O. Box 2827, Baton Rouge, Louisiana 70812, of said occurrence within a reasonable time after the fortuitous event itself, but certainly not more than ninety (90) days therefrom, unless consequential extenuating circumstances prevent the

giving of notice within that time — the sufficiency of consequence and extenuation of said circumstances being within the sole, reasonable determination of the State Mineral Board. In the event of the occurrence of such consequential extenuating circumstances, as subsequently recognized by the Board, notice shall be given at the earliest time allowed by such circumstances. The required notice will clearly state: 1) How the lease was being maintained at the time of the occurrence of the fortuitous event. 2) The nature of the fortuitous event. 3) The resulting effect which prevents the commencement or continuation of lease operations or production. 4) The duration of the fortuitous event and resulting effects. 5) The estimated time necessary to clear up the effects of the fortuitous event.

- 2) Within a reasonable time of the occurrence of the fortuitous event and the written notice thereof lessee or operator shall send to the Office of Mineral Resources any and all evidence surrounding the effects of the fortuitous event — including, but not necessarily limited to, pictures, reports, damage assessments, correspondence between lessee/operator and third parties affecting or being affected by said event and projections of re-establishment of the ability to maintain said lease by lease operations or production; which documentation shall be updated in a continuous and ongoing manner as said information becomes available. The Mineral Board staff, at a meeting called for that purpose, shall examine all documentation and other evidence sent by the lessee or operator and determine, based upon evidence in said documentation, whether or not the event cited by same as the cause of preventing the commencement or continuation of lease operations or production is of such a nature as to warrant force majeure consideration and whether lessee or operator was not itself materially responsible for the occurrence of the fortuitous event (either by negligent commission or omission, deliberate act or failure to take reasonable and timely preventative measures which would have negated or greatly reduced the effects of the fortuitous event, any of which shall be known herein as “lessee’s fault”). Should the evidence presented by the documentation indicate that the fortuitous event was brought about by lessee’s fault, it shall render use of force majeure to maintain the lease a nullity and said lease must then be maintained solely by any viable, applicable lease term absent reference to force majeure. Any recognition of force majeure by the staff which is based upon incomplete documentary or other evidence (for reasons of temporary unavailability) shall be deemed a conditional force majeure and, should later documentation or other evidence indicate that the fortuitous event was in fact lessee’s fault, may be determined by the staff not to be a force majeure situation, such determination to be retroactive to the time of the alleged (but unacceptable) prevention of commencement or continuation of lease operations or production. The State Mineral Board shall be informed of the staff’s determination at the next earliest Mineral Board meeting following the said determination. If the lease suffering the effects of the fortuitous event contains any provisions — such as rental payment, deferred development payment, shut-in, in-lieu royalty payment, etc.— by which the lease may be maintained in full force and effect absent the commencement or continuation of lease operations or production (except those leases which specifically state that rental payment is not required if a bona fide force majeure as set forth in the clause occurs), then the operation of the respective, applicable provision shall be utilized to maintain the affected lease in full force and effect, rather than force majeure, until the respective, applicable provision is no longer operative, at which time the State Mineral Board shall determine whether or not force majeure alone may maintain in full force and effect said lease.
- 3) If force majeure is the sole means by which a lease can be maintained due to the occurrence of an applicable fortuitous event, then such lease may be maintained if notice of such event is timely given to the State as hereinabove set forth, and further, the Mineral Board staff has determined that the event was not caused by lessee fault. The Mineral Board does herein grant the Secretary for the Office of Mineral Resources - and any other party to whom he so delegates said responsibility - the authority to grant recognition of a force majeure occurrence and so notify the lessee/operator in writing; which writing shall notify lessee/operator of its obligation to send monthly reports in writing, beginning on the first day of the month following notice of recognition of force majeure, of lessee/operator’s efforts to ameliorate the effects of the fortuitous event, any progress which has occurred during the month since the previous report and the estimated time for cessation of the force majeure effects and anticipated commencement or continuation of lease operations or production by means other than force majeure. A force majeure situation duly recognized by the State, the effects of which lessee/operator is diligently attempting to ameliorate,

and not occasioned by Lessee's fault, shall not alone serve to maintain in full force and effect any State mineral lease for longer than one (1) year. If it does not reasonably appear that the effects of the fortuitous event can be corrected and lease operations or production commenced or continued within said one (1) year, lessee/operator shall, prior to the expiration of a six (6) month period, request an amendment of the lease in question to provide terms, other than force majeure, by which said lease may be maintained. Whether or not said lease shall be so amended shall be within the sole discretion of the State Mineral Board.

- 4) State mineral leases which do not contain a force majeure clause and on which the commencement or continuation of lease operations or production is halted by the occurrence of a fortuitous event shall be required to be amended to include the force majeure clause set forth in this policy, and the initiation of the lease amendment process must have begun in good faith before recognition of the force majeure event by the Mineral Board staff can be given. The remainder of the force majeure process as outlined hereinabove may continue so long as the lease amendment process is ongoing in good faith to completion. Failure by lessee/operator to so pursue in good faith the lease amendment to include a "force majeure" clause on a State mineral lease not otherwise containing one, and which is subjected to a fortuitous event which prevents the commencement or continuation of lease operations or production, shall subject said lease to termination under the terms of the lease, unless extended by law or equity which shall not be for a period in excess of one (1) year.
- 5) Those State mineral leases without a "force majeure" clause which seek to utilize the effects of a fortuitous event to maintain in full force and effect said lease in the absence of any other means as set forth in the lease (or Operating Agreement) itself shall utilize the following "force majeure" clause (suitably adapted to Operating Agreements when necessary) in amending said lease to include same, and further, this "force majeure" clause shall be utilized in all new mineral leases and operating agreements beginning with the leases awarded at the August 10, 2005 Mineral Lease Sale, to-wit:

"If at any time this Lease is being validly maintained under any of its provisions and Lessee is in the process of either: A) commencing lease operations which are herein defined as spudding a well [turning-to-the-right], downhole drilling, or downhole reworking operations, or B) diligently, timely and in good faith performing requisite tasks to commence lease operations including, but not necessarily limited to, towing the required type of rig to a drill site, obtaining permitting from all necessary parties, or satisfying conditions and obligations under any validly enacted law, statute or regulation of an agency of the Federal Government, the State of Louisiana or any of its political subdivisions having proper jurisdiction, or C) producing in commercial quantities, and Lessee is prevented from continuing A, B, or C by the occurrence of a Force Majeure event, as herein below defined, and Lessee cannot maintain this Lease beyond any critical date under any other operative provisions of this Lease — such as the payment of a pro-rata rental based on the number of months remaining until the next anniversary date divided by twelve (12) and/or the full rental for a year if the force majeure effect prevails for an entire rental period [all during the primary term of the lease and only where rental payments may hold the lease], payment of deferred development or payment of shut-in/in-lieu royalty — then, and only then, shall the critical date be postponed on a day-for-day basis for so long as the effects of the Force Majeure prevail, providing that Lessee: i) has given the Office of Mineral Resources reasonable, timely written notice of the Force Majeure event occurrence [notice given beyond three months shall be deemed unreasonable barring consequential extenuating circumstances] which shall contain the date and type of the occurrence of the Force Majeure event, its effects in preventing continuation of A, B, or C above, the steps being taken to mitigate and eliminate those effects and an estimated time for resuming of A, B, or C above, and ii) is diligently, reasonably and in good faith attempting to mitigate and eliminate the effects of the fortuitous event and resume A, B, or C above, and iii) has exhausted Lease provisions other than Force Majeure which may serve to maintain the Lease in full force and effect. The interpretation and operation of any term of this Force Majeure clause is at the sole, reasonable discretion of the Mineral Board and/or its duly authorized staff. The operation of Force Majeure alone shall not maintain this Lease in full force and effect for more than one year from date of the fortuitous event unless extended by, and at the sole discretion of, the State Mineral Board.

Force Majeure, as herein utilized shall be defined as a fortuitous event such as: 1) a major storm, major flood, or other, similar natural disaster, or 2) a major accident such as a blowout, fire, or explosion

beyond Lessee's control and not ultimately found to be the fault of Lessee [that is, due to Lessee's negligent or intentional commission or omission, or failure to take reasonable and timely, foreseeable preventative measures which would have mitigated or negated the effects of the fortuitous event], or 3) the lack of availability of any required equipment — such as the specific type of rig necessary to accomplish the task or specific types of casing or drill stem pipe — after Lessee has diligently, timely and in good faith attempted to secure same, or 4) the unreasonable delay by the Federal Government or any of its agencies, or the State of Louisiana or any of its agencies or political subdivisions (including, but not limited to, various departments, boards, commissions, parish governments and municipalities, each having proper authority and jurisdiction) in granting necessary permits, or 5) a valid order of any Federal or State court of competent jurisdiction, or 6) the act of a third party not under the control or at the instigation of Lessee in shutting down and unreasonably refusing to reopen any facility through which hydrocarbons from the Lease are necessarily passed as part of production [and providing there is no other reasonably economical method of carrying on production]”.

BE IT FURTHER RESOLVED THAT any actions by past Mineral Boards or any of their staff in dealing with the issue of force majeure as same pertains to oil, gas and other liquid or gaseous mineral leases granted by the State of Louisiana are hereby ratified by the Board and deemed to be and recognized as being in keeping with the policy of the Mineral Board as herein above set forth.

CERTIFICATE

I hereby certify that the above is a true and correct copy of a Resolution adopted at a meeting of the Louisiana State Mineral Board in the City of Baton Rouge, Louisiana, on the 10th day of August 2005, pursuant to due notice, at which meeting a quorum was present, and that said Resolution is duly entered in the Minute Books of said Louisiana State Mineral Board and is now in full force and effect.

Louisiana State Mineral Board